

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI**

JOSEPH R. TOMELLERI,

Plaintiff,

v.

LILLEY’S LANDING, INC.

Defendant.

No.

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiff Joseph R. Tomelleri, by through his counsel of record, and for his complaint against Defendant, Lilley’s Landing, Inc., states as follows:

**GENERAL NATURE OF THE CASE**

1. This case involves the Defendant, Lilley’s Landing, infringing upon the copyright of at least two (2) fish illustrations created and owned by Joseph Tomelleri. Defendant used the illustrations to advertise and promote a fishing tournament they hosted.

**JURISDICTION AND VENUE**

2. This claim is brought pursuant to 17 U.S.C. § 101, et seq.

3. This Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this case arises under the copyright laws of the United States. (17 U.S.C. § 101 et seq.).

4. This Court has personal jurisdiction over Defendant because Defendant is incorporated in and primarily conducts business in the State of Missouri.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) because Defendant is located in this judicial district.

## **PARTIES**

6. Plaintiff is an adult individual and a resident of the State of Kansas.

7. Upon information and belief, Defendant is a for-profit Missouri corporation.

8. Upon information and belief, Defendant may be served via its registered agent, Jerry Phillip Lilley, at 367 River Lane, Branson, MO 65616.

## **TOMELLERI'S BACKGROUND AND WORKS**

9. Plaintiff Joseph Tomelleri is an artist and a trained biologist who has spent most of his working life collecting, studying, and illustrating North American fish species. He is one of the world's best fresh water fish illustrators.

10. Over almost 40 years, Mr. Tomelleri has created over 1300 hand drawn illustrations of fish in various life cycles.

11. Mr. Tomelleri's illustrative process involves his expertise gained from many years of education, his observations of fish in the wild, and obtaining and preserving fish specimens.

12. He incorporates his own expression of color patterns, fin arrangements, and other characteristics he believes most significant for a particular fish species in a particular life cycle phase.

13. Mr. Tomelleri hand draws his illustrations using colored pencils.

14. Each of Mr. Tomelleri's illustrations take him over 100 hours to complete.

15. His illustrations have been published in numerous scientific studies, journals, books, magazines, and fish identification guides.

16. Mr. Tomelleri is the sole owner and proprietor of all rights, titles, and interest in, and to, the copyrights for the illustrations at issue in this case (the "Illustrations").

17. Joseph Tomelleri is and always has been the exclusive owner of the Illustrations.

18. Each of the Illustrations is covered by a copyright registration owned by Mr. Tomelleri.

19. The following table identifies Mr. Tomelleri's Illustrations at issue in this case and the corresponding registration information.

No.	Illustration	Reg. #	Reg. Date
1	Rainbow Trout	VA0001163619	11/05/2002
2	Brown Trout	VA0001163619	11/05/2002

#### **DEFENDANT'S INFRINGING CONDUCT**

20. Defendant is in the business of offering lodging, marina, and fishing services on Lake Taneycomo.

21. Defendant promotes Lake Taneycomo on their website as "the most diverse fishing lake in the country".

22. Defendant hosts public and private fishing tournaments throughout the year.

23. The fishing tournaments hosted by Defendant require participants to register and pay a tournament fee.

24. Defendant promotes and advertises their tournaments by creating tournament flyers and other advertising material.

25. Defendant created a flyer to advertise for the Christian Action Ministries Benefit Trout Tournament hosted by Lilley's Landing.

26. There was a fee associated with registering for the tournament.

27. Defendant, without authorization, reproduced and displayed the tournament flyer and Illustrations or their derivatives on their website: “lilleyslanding.com” (the “Website”).

28. Upon information and belief, Defendant earned revenue from customers who decided to participate in Defendant’s fishing tournaments and others who visit Lilley’s Landing to fish because of Mr. Tomelleri’s illustrations.

29. Plaintiff, through his attorneys, has reached out to Defendants on numerous occasions throughout the last year via phone, email, and regular mail to discuss this claim.

30. The last correspondence was sent via email on June 10<sup>th</sup>, 2024.

### **COUNT I - COPYRIGHT INFRINGEMENT**

**(17 U.S.C. § 501)**

31. Plaintiff restates the allegations contained in paragraphs 1-30 as if fully set forth herein.

32. Plaintiff has valid copyrights and copyright registrations for the Illustrations.

33. Defendant has infringed Plaintiff’s copyrights in his Illustrations by preparing derivative works based upon the Illustrations.

34. Defendant has infringed Plaintiff’s copyrights in his Illustrations by reproducing and publicly displaying unauthorized copies of the Illustrations and/or derivatives thereof on the Website.

35. Defendant has infringed Plaintiff’s copyright in his Illustrations by distributing the Illustrations to the public via its Website.

36. To the extent that Defendant does not acknowledge copying the Illustrations, Defendant had access to the Illustrations, which are published and readily available online, and the images used by Defendant are strikingly similar to the Illustrations.

37. As a result of Defendant's above-described acts of copyright infringement, Plaintiff has sustained damages including but not limited to lost licensing revenue in an amount not yet ascertained, market dilution, and profits earned from the infringement that should be disgorged to Plaintiff.

### **PRAYER FOR RELIEF**

WHEREFORE, for the reasons stated above, Plaintiff prays for judgment against Defendant as follows:

a. Under 17 U.S.C. § 502, grant temporary and final injunctions on such terms as it deems reasonable to prevent or restrain infringement of Plaintiff's copyright.

b. Under 17 U.S.C. § 503, order the impounding and ultimately destruction, on such terms as it may deem reasonable, of any records or material involved in Defendant's copyright infringement.

c. Under 17 U.S.C. § 504, award Plaintiff's actual damages and any additional profits of Defendant, or, if Plaintiff so elects before judgment is entered, award statutory damages.

d. Under 17 U.S.C. § 505, award costs to Plaintiff;

e. Under 17 U.S.C. § 505, as the prevailing party in a Copyright lawsuit, award to Plaintiff reasonable attorneys' fees;

f. Under 28 U.S.C. § 1961, award Plaintiff all available pre-judgment and post-judgment interest on all amounts of any judgment; and

g. Grant to Plaintiff such further relief as may be equitable and proper.

### **JURY TRIAL DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

Dated: July 19, 2024.

Respectfully submitted,

**EVANS & DIXON, LLC**

*/s/ Steven H. Mustoe*

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